IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4608 of 1988

with

SPECIAL CIVIL APPLICATION No 1344 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUPERITENDING ENGINEER

Versus

HITESH MAGATLAL JOSHI

Appearance:

1. Special Civil Application No. 4608 of 1988

MR HC PATEL ASSTT GOVT PLEADER for Petitioner No. 1

MR PM THAKKAR for Respondent No. 1

2. Special Civil Application No. 1344 of 1990

MR PM THAKKAR for Petitioner No. 1

MR HC PATEL ASSTT GOVT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 31/01/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.H.C.Patel, learned AGP appearing on behalf of the petitioner - State of Gujarat and learned advocate Ms.Sangita Pahwa, learned Advocate appearing on behalf of the respondent workman.

#. In both these petitions, respective parties have challenged the common award passed by the Labour Court, Rajkot in Reference No.303 / 1984 dated 10th January, 1987, wherein the Labour Court has not granted reinstatement but directed to the Superintendent Engineer, Panchayat Irrigation Circle, Rajkot to pay full backwages to the respondent workman upto the date of the award. So far, Special Civil Application No.4608/1988 wherein, RULE has been issued by this Court on 22nd February, 1990, whereas, Special Civil Application No.1344 /1990, wherein this Court has passed ordered issuing RULE to be heard with SCA No.8608/1988 on 22nd February, 1990.

#. The grievance of the workman is that the Labour Court has committed error in not granting reinstatement, as also, whatever compensation has been awarded against reinstatement by the Labuor Court is not enough and therefore the respondent workman is entitled more amount of compensation from the employer. Whereas, the grievance of the Superintendent Engineer is that the Labour Court has granted backwages for the period, for which the respondent workman was in service as per the certificate at pg.21 of the petition issued by the Superintendent Engineer, Rajkot, whereby the respondent workman was in service as Gujarati Stenographer with effect from 18th August, 1984 to 6th January, 1988 and thereafter also the respondent workman was continued in service of Superintendent Engineer, Rajkot. Before the Labour Court, the workman had challenged termination order. According to the workman, he was appointed on 14th April, 1981 and his services were illegally terminated on 1st March, 1983. However, written statement was filed by other side, wherein it was pointed out vide Exh.17 that the post of the Gujarati Stenographer Grade-II was sanctioned by the Government but the Collector had not selected the candidate for the post on hand and hence the workman was appointed on 14th October, 1981 through Employment Exchange purely on temporary basis and stop-gap arrangement till the selected candidate is selected and allotted by the Collector. This condition to this effect was also incorporated in the the appointment order of the workman

that his services will be terminated without any notice as soon as regular appointee takes over. Thereafter, one selected candidate Ms.Anila Dayashankar Pandya was serving in the Urban Land Ceiling Office as Gujarati Stenographer and since that post of Stenographer was abolished, said Ms.Pandya was surplus candidate, therefore, the Collector allotted Ms.Pandya to the employer and therefore, there was no other alternative but to discharge the workman. However, this fact was very well known to the workman that his services will be terminated as and when regular employee takes over and he have to be discharged. Before the labour court, the workman had deposed vide Exh.13 and the Senior Clerk of the office of the employer had deposed vide Exh.23. Thereafter, the labour court has examined the evidence on record and ultimately, the Labour Court has come to the conclusion that looking to the facts that there is no post of Gujarati Stenographer in the office of the employer at present and therefore, the relief of reinstatement should not be granted. The workman has also admitted in his deposition that he is serving in Water Supply Board in the pay scale of Rs.475-800. The workman has also filed statement of claim at Exh.12 showing his earnings during the period from 14th April, 1983 to 30th March, 1984, roughly calculating the total income out of his earnings is about Rs.11,000/- and something more. Therefore, the labour court has considered this amount as lumpsum compensation in lieu of the reinstatement relief and therefore, the Labour Court has considered that instead of deducting this amount from the backwages of the workman, according to the opinion of the Labour Court, same should be allowed to keep this amount as lump sum compensation in lieu of reinstatement in service and in addition to this, he should be allowed full backwages upto the date of the award.

#. Learned AGP Mr.H.C.Patel appearing on behalf of the State of Gujarat has submitted that according to the deposition of one Shri Yogesh Lakshmishankar Dave, Senior Clerk working in the office of the employer vide Exh.23, wherein it is stated that the workman has been appointed and working in Water Supply Board with effect from 18th August, 1984 as Gujarati Stenographer Grade II. Mr.Patel, learned AGP has also relied upon the evidence of the respondent workman vide Exh.13 that in cross examination the workman has submitted that it is true that at present he is working in Water Supply Board in the pay scale of Rs.465-800/- That he is working as Gujarati Stenographer Grade-II. This cross examination was held on 16th January, 1987. Therefore, Mr.Patel, learned AGP has submitted that this fact was before the

Labour Court that workman was gainfully employed during intervening period and despite of this fact, the Labour Court has granted full backwages for interim period. It is also submitted that for the entire period the respondent workman was in service as per the certificate at pg.21 for the period from 18th August, 1984 to 6th January, 1988. Therefore, in short the submission of learned AGP Mr.H.C.Patel that the labour court has committed gross error in granting full wages for interim period when undisputedly the workman was in gainful employment working as Gujarati Stenographer in Water Supply Board.

#. Learned advocate Ms.Sangita Pahwa appearing on behalf of the respondent workman is not able to dispute this factual situation and the contents of the certificate which has been produced by the State Government at pg.21 of the petition that the respondent workman was in service with effect from 18th August, 1984 to 6th January, 1988. However, the labour court has granted wages for the period, which is included in the period shown in the said certificate and therefore, considering this fact, it appears that the Labour Court has committed gross error by not considering the evidence led before him and despite of this fact, passed the award directing backwages of the interim period to the respondent workman. Therefore, award granting backwages of interim period in favour of the respondent workman is required to be quashed and set aside.

#. However, learned advocate Ms.Pahwa appearing on behalf of the workman has raised one more contention that whatever lumpsum compensation amount which has been awarded by the Labour Court in lieu of reinstatement as the post in question has been abolished, is not sufficient and she relied upon the decision of the Apex Court in case of RAS BEHARI V. HARYANA AGRICULTURAL UNIVERSITY THOROUGH VICE CHANCELLOR HISSAR AND OTHERS reported in [1987] 2 SCC pg.543. Against this contention, Mr.H.C.Patel, learned AGP for State has submitted that services of the workman were terminated because of the fact that regular candidate was allotted to the petitioner employer by the Collector. Moreover, the appointment of the respondent workman was conditional one and on purely temporary basis and stop gap arrangement and this condition was known to the workman and therefore, considering the total service of two years period put in by the respondent workman, the Labour Court has rightly considered that lumpsum compensation of Rs.11,000/- in lieu of reinstatement is just and proper.

#. This Court has perused the judgment of the Apex Court. However, perusal of the judgment does not reveal the facts of the case in detail. However, in overall view of the matter, the judgment of Apex Court relied on by Ms.Sangeeta Pahwa is not applicable with the facts and circumstances of the case on hands.

#. Therefore, having regards to the submissions of the learned advocates for the parties and considering the totality of the facts and circumstances of the case so also, considering the findings given by the Labour Court, according to my opinion, the workman was appointed on the permanent post not after due process of selection. Moreover, the petitioner was appointed after calling his name from the employment exchange on purely temporary basis and stop gap arrangement and thereafter his services were terminated on availability of the regular candidate as allotted by the Collector, Rajkot. Therefore, in view of this Court the Labour Court has rightly appreciated the evidence before the Labour Court as also rightly considered gainful employment of the workman which is less than one year and accordingly, awarded the amount of Rs.11,000/- as lumpsum compensation for completing services of two years as temporary employment.

#. In view of above discussions, directions given by the Labour Court in respect of the backwages for interim period is hereby quashed and set aside. However, it is made clear that direction given by the Labour Court in respect of grantin lumpsum compensation of Rs.11,000/- to respondent will remain unaltered and intact.

##. Learned advocate Ms.Sangeeta Pahwa on behalf of the workman has submitted that in pursuance of the award passed by the Labour Court, Recovery Application No.858/1988 under Section 33[C][1] of the Act was filed by the workman before the Labour Court and the Labour Court has passed order in favour of the workman. Therefore, Civil Application No.315/ 1990 in Special Civil Application No.4608 / 1988 was filed. In said Civil Application, the Division Bench of this Court has passed order on 22nd February, 1990, whereby order passed in Recovery Application was stayed with direction to other side to deposit sum of Rs.34,000/- towards disputed amount and the said amount has been permitted to be withdrawn by the workman on furnishing security to the satisfaction of the Labour Court, Rajkot. Learned advocate Ms.Sangeeta Pahwa has also submitted that this amount has already been withdrawn by the workman concerned. In view of this factual aspect pointed out by

learned advocate Ms.Pahwa, though this Court has set aside direction granting backwages awarded by the Labour Court but since the respondent workman has already withdrawn the amount of Rs.34,000/- from the labour court in the year 1990, this amount should not be recovered from the workman concerned. Therefore, in pursuance of this order passed by this Court in aforesaid two Special Civil Applications today, no recovery can be effected from the workman by the employer in respect of the amount of Rs.34,000/- which has already been withdrawn by the concerned workman from the Labour Court. Therefore, it is ordered that said amount shall be retained by the workman concerned and no recovery be effected from workman concerned by the employer and workman shall not pay any amount already withdrawn by the workman from the Labour Court, Rajkot.

#. In the result, Special Civil Application No.1344/1990 stands rejected and RULE stands discharged accordingly. Whereas, Special Civil Application No.4608/88 stands allowed to the extent indicated hereinabove and accordingly RULE is made absolute to that extent with no order as to costs.

Date : 31-1-2002 [H.K.Rathod, J.]

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